

**TESTIMONY OF
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**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM
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Mr. Chairman, Ranking Member, and Members of the Committee:

Thank you for providing us the opportunity to testify here today.

Let me start by making a clear and unmistakable point: we, at Comcast, are fans of the Washington Nationals, we want to carry as many of the team's games as possible, and we are absolutely committed to solving the current dilemma. As you may have heard, we have proposed a solution to Major League Baseball (MLB) which we hope will get a full review and will serve as a basis to resolve this situation once and for all. A copy of our proposal is attached to this testimony.¹

It is also important to note that Comcast has always supported the return of major league baseball to the Washington D.C. area. This position distinguishes us from the Baltimore Orioles, which consistently opposed the return of baseball to Washington. The Orioles apparently believed that a Washington baseball team would result in a loss of fans and television revenue and, therefore, would reduce the value of that team. For instance, Peter Angelos told the Associated Press on March 13, 2005 that a Washington baseball team would have a "profound adverse impact" on the Orioles. On July 24, 2004, the Associated Press quoted Mr. Angelos as saying that a Washington baseball team would cost the Orioles \$40 million a year. It is certainly Mr. Angelos' right to advocate on behalf of the economic interests of the Orioles. And this is properly a matter that should have been resolved between MLB and the Orioles.

The MLB Deal With Mr. Angelos Will Impose Substantial Costs On Consumers.

The problem that confronts us today began when MLB came up with its very odd solution to this problem – it's what I refer to as the "original sin" in this entire episode.

MLB chose to compensate the Orioles by giving the team control of the Nationals' local television rights – the first time in history, of which we are aware, that a team's rights

¹ See Letter from Stephen B. Burke, President, Comcast Cable Communications, to Allan H. (Bud) Selig, Commissioner, Major League Baseball (Apr. 6, 2006) (attached hereto as Exhibit A).

have been handed over to a rival franchise.² There was no sale process to protect the Nationals' interests.³ The usual market-based procedures for licensing a team's rights were cast aside.

Comcast is agnostic as to whether or not MLB owes the Orioles compensation as a result of the relocation of the Nationals to the Washington area. But we do object to how MLB has chosen to compensate the Orioles -- by assigning the television rights of the Nationals to the Orioles. By doing this, MLB has tried to foist onto D.C. area cable customers -- your constituents, Mr. Chairman -- the obligation that they believed they had to compensate the Orioles. That is unfair to our customers and it's just plain wrong. Let me explain.

The Orioles and MLB have created a new regional sports network -- Mid-Atlantic Sports Network (MASN). MASN is trying to charge satellite and cable providers more than \$2 a month per subscriber once MASN is carrying Nationals and Orioles games.⁴ This charge is for a channel that has no programming right now other than Nationals games and --if the Orioles succeed in violating the team's current contract with Comcast SportsNet Mid-Atlantic (CSN) -- Orioles games. Even today, one year after its launch, MASN offers no sports newscasts, no college games, and no other sports contests.⁵ In fact, for nearly 8,000 hours a year, MASN offers nothing but a dark screen. It is no wonder that *Communications Daily* reported last week that independent analysts, such as Bruce Leichtman, believe that MASN is asking "too much" for carrying its network.⁶

What does this mean for Washington area consumers? Only this -- over the next decade, assuming the cable and satellite companies pass along these increased programming costs to their customers, this arrangement will transfer more than \$600 million from Comcast customers -- and more than \$1.3 billion from all D.C. area cable customers -- to a business that is controlled, and majority owned, by the Orioles.

The MLB Deal With Mr. Angelos Does Not Serve The Interests Of The Nationals Or Their Fans.

Of course, at the same time that this assignment of the television rights to the Orioles hurts our customers, it also hurts the Nationals. According to MASN's own website, the

² See Jayson Stark, *Stark: Rumblings & Grumbings*, ESPN.com (Apr. 30, 2005) ("It's hard to think of any franchise that has its games televised by a network controlled by another team. But maybe that's because there aren't any.").

³ See Andrew Zimbalist, *In the Best Interests of Baseball? The Revolutionary Reign of Bud Selig* 183-188 (2006) (describing MLB's negotiations with Mr. Angelos).

⁴ "Prices such as MASN wants more commonly are associated with ESPN and other national sports networks[.]" Josh Wein & Jonathan Make, *MASN Seen Retreating on High Comcast Carriage Fee*, Comm. Daily, Mar. 29, 2006, at 9-10.

⁵ See Mike Reynolds, *Hard Ball: Regional Nets at Bat in Baseball Battles*, Multichannel News, Mar. 27, 2006 (noting that MASN only shows Nationals games and pre- and post-game shows).

⁶ Josh Wein & Jonathan Make, *MASN Seen Retreating on High Comcast Carriage Fee*, Comm. Daily, Mar. 29, 2006, at 9-10.

network paid only \$20 million to the Nationals in 2005.⁷ This is well below what we believe the market rate is. We know this because we offered to pay more for the rights. And, unbelievably, the rights deal states that, at least until 2011, the Orioles will not get less for its TV rights than the Nationals – placing an added constraint on what MASN will be willing to pay for the Nationals' TV rights and contractually eliminating the real differences in the value of the Washington market compared to the Baltimore market – all only for the benefit of the Orioles.⁸

Moreover, we believe this deal creates a real and substantial conflict of interest. Because the Orioles control their rival's TV exposure, and as the Orioles have stated that the Washington team will harm the Orioles' financial interests, the Orioles have every natural incentive to promote themselves while limiting the exposure and growth of the Nationals' fan base.

Last year, for instance, the Orioles negotiated over-the-air broadcast deals that did not provide the Nationals with carriage in many D.C. suburbs and in certain Baltimore markets, while negotiating over-the-air broadcast deals for the Orioles that included *all* homes in the D.C. and Baltimore markets.⁹ And this year, it was the Orioles – not Comcast – that decided to slash the number of Nationals games on over-the-air broadcast television from 81 to 39 games.¹⁰

MASN Is The Product Of A Breach Of Comcast Sports Net's Contractual Rights To Orioles' Baseball Games.

As noted, MLB's agreement with Mr. Angelos included the TV rights to the Nationals. Mr. Angelos, in turn, used those rights to create MASN with MLB. But, because regional sports networks (RSNs) typically will not survive with TV rights to only one major league team, Mr. Angelos wanted to package the Nationals' TV rights with the Orioles' TV rights.¹¹ However, those rights belong to CSN. Specifically, CSN has carriage rights for the Orioles through the 2006 season. CSN also has an exclusive right to negotiate for the extension of that agreement and, after the period of exclusivity expires, the right to match any offer from a "third party" for the Orioles' TV rights. (In

⁷ See MASN, *Frequently Asked Questions*, at <http://www.masn.tv/faqs/> (visited Apr. 5, 2006).

⁸ See Exhibit B, Section 2.G. The MLB agreement with Mr. Angelos to create MASN is attached hereto as Exhibit B. This is the redacted version of the agreement that TCR (an Orioles-owned entity) filed with the FCC as an exhibit to its program carriage complaint against Comcast. Comcast has never seen an unredacted version of this agreement.

⁹ See Childs Walker, *Annoyed Fans Stay Tuned to TV Talks*, Balt. Sun, Apr. 16, 2005 (noting the lack of broadcast carriage of Nationals games in the Baltimore market); Ed Waldman, *Orioles, MLB Reach Tentative Deal On TV Network To Show Nationals*, Balt. Sun, Mar. 31, 2005 (same).

¹⁰ Compare Thomas Heath, *Nats to Have Fewer Games Over the Air*, Wash. Post, at E1, Feb. 24, 2006 (noting that 81 Nationals games were broadcast in the 2005 season), with Washington Nationals, *Broadcast Schedule*, at <http://washington.nationals.mlb.com/NASApp/mlb/was/schedule/broadcast.jsp> (last visited Apr. 4, 2006) (indicating that 39 Nationals games will be broadcast in the 2006 season).

¹¹ See Exhibit B.

1996, CSN's predecessor, Home Team Sports, paid a premium price to secure these provisions in the contract.)

Notwithstanding these contractual requirements, Mr. Angelos agreed to license the Orioles' TV rights after 2006 to MASN for the same license fees paid to the Nationals for its rights. CSN filed a breach of contract claim in Maryland Circuit Court last May.¹² The court sided with the Orioles in the first round of litigation (on the grounds that MASN was not a "third party" under the contract, but rather a registered trade name of TCR, another Orioles-owned entity that handles telecast licensing for the Orioles). The case is now on appeal to Maryland's highest court. The case will be briefed and argued this summer and fall. Comcast firmly believes that its contractual rights with respect to the Orioles will be vindicated on appeal.

MASN's Program Carriage Complaint At The FCC Is Without Merit.

We also want to touch on the program carriage issues that have been raised regarding MASN. As the Committee knows, last June, TCR filed a complaint with the FCC, alleging that Comcast violated the FCC's program carriage rules.¹³ TCR made two basic claims in its complaint. First, it alleged that Comcast demanded an equity interest in MASN as a condition of carriage. In particular, TCR claimed that Comcast had made these demands for equity through Steve Greenberg, an investment banker with Allen & Company, who was hired by MLB to develop various RSN proposals involving the Nationals' telecast rights prior to MLB's agreement with Mr. Angelos. Second, TCR alleged that Comcast discriminated against MASN on the basis of affiliation in refusing to carry MASN while carrying CSN.

As Comcast detailed in its answer to the complaint last July, TCR's claims are without merit.¹⁴ As to the first claim, Comcast denied that it ever demanded an equity interest in TCR or MASN. It also noted that Allen & Co. had sent the FCC two letters expressly denying TCR's accusations that Steve Greenberg had secretly operated on Comcast's behalf to demand that TCR give Comcast a financial interest in MASN.¹⁵ In fact, Mr. Greenberg acted solely on behalf of MLB.

¹² See *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding, L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, First Amended Complaint, Civ. Action No. 260751-V (Md. Cir. Ct. filed May 24, 2005).

¹³ See *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Carriage Agreement Complaint, File No. CSR-6911-N (June 14, 2005).

¹⁴ See *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Answer of Comcast Corporation, File No. CSR-6911-N (July 14, 2005) ("Answer"). Comcast's Answer is attached hereto as Exhibit C.

¹⁵ See Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Hon. Kevin J. Martin, Chairman, Federal Communications Commission (July 11, 2005); Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Hon. Kevin J. Martin, Chairman, Federal Communications Commission (July 13, 2005). These letters from Allen & Company to the FCC are attached hereto as Exhibit D.

As to the second claim, Comcast noted, among other things, that:

- Comcast has numerous legitimate business reasons for not carrying MASN (such as the high price for MASN and the lack of programming on the network, other than the Nationals games).
- Comcast has a proven track record of carrying unaffiliated RSNs in markets where it also had affiliated RSNs, including Atlanta, Chicago, New York, Boston, the Bay Area, and South and Central Florida, so claims of anti-competitive conduct are untrue. Comcast has no financial interest in over 90% of the programming we carry and most of the sports programming we carry is unaffiliated.
- Other MVPDs, such as Time Warner, Adelphia, and EchoStar, have also elected not to carry MASN either and clearly made their decisions for reasons unrelated to affiliation.
- The carriage agreements that MASN offered to Comcast were long-term carriage contracts that included the carriage of future Orioles' games, notwithstanding that MASN's asserted rights to these games were acquired in violation of the Orioles' existing contract with CSN.
- Comcast does not have the power to unreasonably restrain the ability of MASN to compete fairly. First, MASN overstated Comcast's position in MASN's service area, which extends from Harrisburg, Pennsylvania to Charlotte, North Carolina. Comcast pointed out that it serves less than 30% of TV households in that service area (*i.e.*, 1.9 million out of 6.3 million TV households). Second, Comcast noted that there are multiple actual and potential competing distributors of Nationals' games in the Washington market, and that DirecTV, Verizon, and RCN had agreed to carry MASN.¹⁶

The complaint is still pending at the FCC. Comcast has asked that the complaint be dismissed with prejudice.

MLB Bears Significant Responsibility For Creating This Unfair Situation And Is Uniquely Positioned To Help Resolve It.

Comcast is not here today to assign blame. We're here to find a solution that is in the best interests of the Nationals, their fans, and all consumers, that allows Mr. Angelos to protect his legitimate interests, and that gets the Nationals' games televised.

Thus, Comcast has stepped up to the plate with the following proposal, which can solve the impasse immediately.

¹⁶ As detailed in Comcast's Answer, MASN itself has acknowledged that the distribution deals it had already struck with DirecTV and others fully addressed its foreclosure concerns. See Answer ¶ 52 (quoting MASN officials about deal with DirecTV).

We have suggested that MLB and Mr. Angelos return control of the Nationals' television rights to the Nationals, their rightful owner. Let the team engage in a process for the sale of its local television rights in which all legitimate telecast partners are invited to make proposals, like any good business would do. MASN can bid on those rights, as can CSN and any other regional sports network or broadcast television station. If MLB's owners believe their colleague Mr. Angelos deserves compensation, let them pay him directly – rather than shifting this burden to cable and satellite consumers, and to vast numbers of your constituents. Our proposal will ensure that the Nationals get the full market value for the team's television rights so that the new owner can build and maintain a competitive team, and that Mr. Angelos and the Orioles receive the compensation that they may deserve from MLB.

If MLB will agree to this solution, Comcast will immediately begin televising all Nationals games that are available for local cable broadcast. We have also offered the Nationals an additional rights fee – equal to what MASN is paying the team – for the *non-exclusive* rights (along with MASN) to televise these games this year. This will give the Nationals twice the rights fee that they are getting this season, plus a fair market deal going forward. The fans will benefit because all of the games will be on television, and the Nationals will prosper, as they deserve to. The new owners of the Nationals – and we hope they are announced soon – deserve nothing less.

We have to find a solution that is in the best interests of all the interested parties. It means undoing the “original sin” of the disinheritance of the Nationals of their TV rights. Instead, the free market should be left to work unconstrained by the artificial situation created by MLB.

Our proposal will get the Nationals' games on the air fast, give the Nationals fair-market value for the team's local cable rights, and allow MLB and the Orioles to work out their issues in a way that does not raid the wallets of our customers. That, Mr. Chairman, would be a grand-slam.

Thank you for this opportunity to testify today.